

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SHELLESE PAYTON,

Plaintiff,

v.

MIKE SHOEMYER, et al.,

Defendants.

Case No. 2:12-cv-00999-MMD-VCF

ORDER

Before the Court is the Report and Recommendation of U.S. Magistrate Judge Cam Ferenbach (dkt. no. 4) ("Recommendation") entered on July 11, 2012, recommending granting dismissal of Plaintiff's Complaint (dkt. no. 1-1) without prejudice and giving Plaintiff leave to amend. No objection to the Report and Recommendation has been filed.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. See

1 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
2 of review employed by the district court when reviewing a report and recommendation to
3 which no objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
4 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
5 view that district courts are not required to review "any issue that is not the subject of an
6 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
7 the court may accept the recommendation without review. *See, e.g., Johnstone*, 263 F.
8 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
9 which no objection was filed).

10 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
11 determine whether to adopt Magistrate Judge Ferenbach's Recommendation. Upon
12 reviewing the Recommendation and pleadings, this Court finds good cause to adopt the
13 Magistrate Judge's Recommendation in full.


14 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and
15 Recommendation (dkt. no. 4) entered on July 11, 2012, is adopted and accepted.

16 IT IS ORDERED that the Clerk of the Court shall file the Complaint (dkt. no. 1-1).

17 IT IS ORDERED that the Complaint (dkt. no. 1-1) shall be dismissed without
18 prejudice.

19 IT IS FURTHER ORDERED that, pursuant to Local Rule 15-1, should Plaintiff
20 choose to file an amended complaint, it shall be complete in itself without reference to
21 any previous complaint. Plaintiff is given thirty three (33) days from the date the Clerk
22 mails Plaintiff a copy of this Order within which to file an amended complaint remedying,
23 if possible, the defects in the complaint explained in the Magistrate Judge's Report and
24 Recommendation. Any allegations, parties, or requests for relief from prior papers that
25 are not carried forward in the amended complaint will no longer be before the court.

26 DATED THIS 27th day of August 2012.

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UNITED STATES DISTRICT JUDGE